

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 6, 2008

3:13 PM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

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HEARING re Motion Filed by Lehman Commercial Paper Inc. Seeking
Authority to Continue to Utilize Bank Account, Terminate Agency
Relationships and Elevate Loan Participations

Transcribed by: Lisa Bar-Leib

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1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 MS. MARCUS: Good afternoon, Your Honor.

4 THE COURT: Good afternoon.

5 MS. MARCUS: Jacqueline Marcus from Weil Gotshal &
6 Manges LLP on behalf of Lehman Commercial Paper Inc. First,
7 Your Honor, a brief update. We filed three additional Lehman
8 related debtors on Friday evening. Their names are Lehman
9 Brothers Specialized Financing Inc., Lehman Brothers Commodity
10 Services Inc. and Lehman Brothers Finance, S.A. And most
11 recently, last night, late last night, we filed ten additional
12 cases. The names of those debtors are Lehman Brothers
13 Derivative Products Inc., Lehman Commercial Paper Inc., Lehman
14 Brothers Commercial Corporation, Lehman Brothers Financial
15 Products Inc., Fondo -- and pardon my Spanish accent --
16 d'Investimento Multimercado Credito Cevaro (ph.), Lehman's
17 Scottish Finance LP, CES Aviation LLC, CES Aviation V LLC, CES
18 Aviation IX LLC and East Dover Limited.

19 We're here today, Your Honor, with respect to the
20 emergency relief required by one of last night's debtors,
21 Lehman Commercial Paper Inc. and we thank you for seeing us on
22 such short notice. The motion at issue today is the motion
23 pursuant to Sections 105(a), 363(b) and 363(c) of the
24 Bankruptcy Code and Bankruptcy Rule 6004 for authority to
25 continue to use agency bank accounts, terminate agency

1 relationships and elevate loan participation.

2 Your Honor, notice of the motion and the motion were
3 served by e-mail late this morning and by fax a little after 12
4 noon on all parties on the master service list with the except
5 of thirty-three parties for whom we only had mail addresses.
6 So those will be mailed, obviously, a little bit too late. In
7 addition, however, and I think the courtroom demonstrates that
8 a lot of people have received notice of this hearing. Notice
9 of the hearing was posted on the LSTA website early this
10 morning including the motion and a summary of the relief
11 requested in the motion.

12 A bit of background, Your Honor. Since the filing of
13 the Lehman Brothers Holdings case, LCPI has literally been
14 bombarded with inquiries from borrowers and lenders regarding
15 the status of their agency business. LCPI is involved in a
16 lending business and it acts as an agent with respect to
17 approximately 150 loans. In those agency relationships, they
18 represent more than a thousand lenders. So since the filing of
19 the Lehman Brothers Holdings case, we've had numerous inquiries
20 regarding whether LCPI would continue as agent, whether lenders
21 should advance in the ordinary course to the LCP account that
22 was used for that purpose, whether borrowers should advance
23 payments of principal and interest to that account for
24 subsequent distribution to the other lenders and whether LCPI
25 would have access to the funds in the account. We have worked

1 cooperatively in the pre-petition period with Citibank where
2 that account is maintained and we have all spent and the
3 employees of LCPI have spent an inordinate amount of time
4 trying to assure people that that agency account would be
5 maintained intact, that it would operate normally and they
6 should continue to fund payments into that account for
7 distribution in the ordinary course. I think we've done a
8 fairly good job in the pre-petition period of keeping that
9 altogether. Of course, the circumstances have changed with the
10 advent of the LCPI filing. And as a result, we prepared a
11 motion to request that the Court authorize the debtor to
12 continue using that account and direct the lender to continue
13 providing access to that account -- not the lender, excuse me,
14 the institution in which the account is maintained.

15 Citibank's attorneys are here and Citibank, I
16 believe, and they'll probably speak later, is generally
17 agreeable to continuing the agency account.

18 THE COURT: Generally agreeable or agreeable?

19 MS. MARCUS: They have a few little tweaks that
20 they'd like to make but they should be fine. The motion is
21 comprised of three different forms of relief. One is with
22 respect to the agency account, I think as I've already
23 described. Two is with respect to the agency relationships in
24 general and the debtor's desire to start terminating, resigning
25 from, ending those agency relationships so that it is not

1 caught in the middle between borrowers and lenders any further.
2 And the third has to do with what we've called elevating
3 participation where LCPI has participated out in many, many,
4 many, over 700, loan participations and wants to elevate its
5 participants to the direct lender position or its sub-
6 participants to the participants' position and, again, exit
7 from between those relationships.

8 THE COURT: I have a question about that.

9 MS. MARCUS: Sure.

10 THE COURT: This may not be the right time to answer
11 it but you should know that I have the question and you can
12 answer it whenever you think it's appropriate. I've never seen
13 the term "elevation" used in this way before at least in the
14 pleading that I've had before me. And ordinarily,
15 participations are governed by well recognized documentation in
16 the loan syndication industry and there's a distinction that
17 parties to such transactions draw between participations and
18 pro-lender relationships. In the "elevation", as you use that
19 term, is it contemplated that there will be negotiated
20 documentation to the satisfaction of all parties to the
21 transaction that will, in effect, convert participations into
22 direct lending relationships with the various borrowers who are
23 affected? Or is it something short of that that's involved?
24 That's question 1.

25 MS. MARCUS: May I answer that one first?

1 THE COURT: You can. Question 2 is whether there's
2 anything about the order that seeks to impose a burden on any
3 party to so agree? I am assuming that the only thing that's
4 happening here is authorization to the new debtor to engage in
5 such documentation as may be appropriate to affect these goals.

6 MS. MARCUS: I'll answer the second one first. The
7 answer to that one is yes and various parties have asked that
8 question as to whether we were trying to somehow enhance the
9 debtor's rights, change the rights of the counterparties,
10 adversely affect them. The answer to that was no, we weren't
11 intending to do that. We've modified the order and I will read
12 into the record a few additional changes to make that very
13 clear.

14 THE COURT: Okay.

15 MS. MARCUS: The answer to the first question is
16 that, yes, the intent is to elevate participants to direct
17 lender positions. Now there were somewhere there are sub-
18 participants so they're only being elevated to the position
19 that LCPI had which might not be a direct lender position. Bu
20 the attempt is to put them in the position that LCPI had and
21 let LCPI exit .

22 I hadn't heard the term "elevation" until two weeks
23 ago and it has become part of my daily vocabulary. But
24 apparently, it is a term of art in the banking world.

25 THE COURT: I'm sure there are many terms of art I

1 will come to learn in the course of this case. But at least
2 when I was in practice, there was no concept of a Court
3 intervening to wave a magic wand and change relationships. Is
4 it contemplated that that's what's happening here or is it
5 simply authorizing consensual commercial behavior?

6 MS. MARCUS: The latter.

7 THE COURT: Fine.

8 MS. MARCUS: And the other thing I've been asked to
9 include in the order because the creditors' committee has a
10 position on this participation, in particular, and we will be
11 consulting with the representatives of the creditors' committee
12 and establishing a protocol for those participations that we
13 collectively view as true participation and perhaps those that
14 we don't and acting accordingly. So we have taken that into
15 account. But again, just to reiterate, there is no attempt on
16 the participation side or the agency side to change the
17 relative rights of the parties. And the reason for the motion
18 was for the Court, the creditors' committee, the U.S. trustee
19 and other parties to be aware of what we intend to do in
20 accordance with those governing documents.

21 Getting back for a second to the agency account, I
22 can describe the account number on the funds. A number of
23 parties are here in the courtroom. I don't think, and I don't
24 know whether there's anybody on the phone, I think with respect
25 to the agency account, almost everybody that I've spoken to, if

1 not everybody, has agreed that it's important that the relief
2 be granted and be granted quickly because, for example, there
3 are borrowers today who are requesting advances under their
4 revolvers. They need that money and we don't want that to be
5 held up. So I can go into additional detail if you'd like me
6 to but if there's no objection, I'd just as soon dispense with
7 that.

8 THE COURT: Well, let me first find out if there are
9 any objections or comments that any party may have in
10 connection with, in effect, providing a comfort order as to the
11 way the agency account will continue to be used.

12 MS. MARCUS: Okay.

13 THE COURT: That's really step 1. Step 2 is going to
14 be what proof is presented in the record to support the entry
15 of the overall order including this aspect of it. I did not
16 notice that there was an affidavit or other declaration to
17 support the requested relief. I'm assuming that there is
18 someone who will be offered to provide that necessary
19 evidentiary record.

20 MS. MARCUS: Yes, Your Honor. He actually arrived
21 while I was up here speaking so I can now breathe a sigh of
22 relief that my witness, James Seery, currently of Barclays
23 Capital, formerly of Lehman, is here to

24 THE COURT: Fine.

25 MS. MARCUS: -- either testify or I will proffer

1 testimony.

2 THE COURT: Fine. Let's just start with comments or
3 objections or any reactions to what you're proposing.

4 MS. MARCUS: Sure.

5 MR. DUNNE: Good afternoon, Your Honor. Dennis Dunne
6 from Milbank, Tweed, Hadley & McCloy on behalf of the official
7 creditors' committee. I rise to put into context some of the
8 comments we've asked the debtors to include in the order. But
9 at the outset, the committee's generally supportive of this
10 relief. To the extent that Lehman acts as agent for syndicate
11 of lenders, the benefits to the estate are diminimus but the
12 burden's substantial so we favor trying to transfer or resign
13 out of those positions.

14 Similarly, if Lehman owes bank debt itself for which
15 it has sold the economic interest through a participation, we
16 understand that they are trying to collapse that. They use the
17 term "elevated" but they're trying to collapse that to remove
18 Lehman as the intermediary or middle man between that, and, in
19 essence, make the participant an assignee and a lender of
20 record.

21 Our comments and potential concerns are in two areas.
22 One is, we are assuming that all of these are true
23 participations. If they are not true participations and, for
24 instance, are disguised financings, we don't want to be
25 prejudiced today by anything that's in the order. If it's a

1 disguised financing, for instance, and the counterparty is
2 properly perfected, it may not make a difference because their
3 collateral would be the underlying bank debt. If it's a
4 disguised financing and they're not properly perfected, they
5 may just be an unsecured creditor of the LCPI estate which
6 would allow LCPI to retain the ownership of the bank debt and
7 receive the proceeds.

8 So the change that we have agreed on is two-fold.
9 One, we'll work hand in glove with the debtors through each of
10 these to determine at the outset whether they're true
11 participations or not. There's also language in the order that
12 we've asked to be added which is consistent with Your Honor's
13 comments that we're not trying to alter the commercial
14 relationship that exists on the petition date between any of
15 the counterparties. So there's basically a reservation of
16 rights that says that, that this order is not impairing the
17 rights as they exist with respect to any of the parties.

18 Lastly, there is a concern with respect to the
19 transfer of the agency roles. Typically, out of court, there'd
20 be a transfer agreement. And that agreement could contain, and
21 frequently does contain, indemnities and affirmative covenants
22 on the part of the incumbent transferring agent, i.e., LCPI in
23 this case, which we don't think is appropriate here because
24 that could give rise to administrative expense liabilities for
25 the breach. And they could walk away, in essence, from the

1 obligations under those contracts today and the counterparty
2 would have unsecured pre-petition claims for that breach.
3 We're not against accommodating a smooth transition but we
4 don't think, in so doing, we should unintentionally create
5 administrative expense liabilities. And the debtors, again,
6 have agreed to work through that to take appropriate steps to
7 ensure that that does not happen.

8 And with that, Your Honor, the committee's in support
9 of the relief requested.

10 THE COURT: Fine. Thank you.

11 MS. FINK: Good afternoon, Your Honor. Jessica Fink
12 of Cadwalader here on behalf of Citibank, the institution of
13 which the agency account is maintained. Your Honor, Citibank
14 has no substantive objection to the relief requested in the
15 motion. However, Citibank would like some comfort about from
16 whom it should take direction with respect to transfer of the
17 funds maintained in the account in light of the fact that the
18 debtor will be resigning or transferring its role as agent.

19 We're willing to work with the debtor going forward
20 on this; however, we would suggest that some sort of notice be
21 filed with the court or posted on the docket every time the
22 agency is transferred or assigned so that Citibank has comfort
23 about exactly from whom it should be taking direction.

24 THE COURT: Okay.

25 MS. FINK: Thank you.

1 MS. CATON: Good afternoon, Your Honor. Amy Caton
2 from Kramer Levin. We're here representing Contrarian Funds
3 LLC and Abram Capital Partners. And unfortunately, we were
4 able to file a response this afternoon but it was only
5 approximately thirty minutes prior to the hearing.

6 Our two clients hold approximately seventy-five
7 million dollars in claims against the Enron estate through
8 Lehman Commercial Paper Inc as the record holder with our
9 clients as the beneficial holders. And we support the debtor's
10 motion but would like to request that the relief be extended to
11 other types of participations where the debtors have no
12 beneficial interests.

13 Our claims may be even easier than those in the
14 administrative loan category because we don't have ongoing
15 requirements by Lehman Brothers Commercial Papers Inc. other
16 than turning over of funds to our clients. And if the funds
17 aren't turned over within x days, I believe it's three days of
18 distribution, then interest starts to accrue on those funds.

19 In this instance, Enron is expected to make an 800
20 million dollar distribution within a few days and we want to
21 make sure that these distributions go out to our clients as
22 they're due. And we're happy to comply with any documentation
23 requirements that the debtors or the committee may ask of us.

24 And furthermore, on a going forward basis, we'd like
25 to find a solution so that Lehman Brothers can exit its

1 obligations and have the beneficial holders step in and receive
2 their funds directly or appoint a new participation agent in
3 their place.

4 THE COURT: Okay.

5 MS. SCHONHOLZ: Good afternoon, Your Honor. Margot
6 Schonholz, Kaye Scholer, for Bank of America as a lender and LC
7 issuing bank under the five billion Archstone credit
8 facilities. We filed an objection about an hour before the
9 hearing. We share the goal of removal of LCPI as an
10 administrative agent in an orderly fashion and we've been, in
11 fact, asking LCPI to resign for a few weeks. BofA is prepared
12 to step in as a replacement agent if customary success or
13 agency documentation is executed. We understand the
14 committee's concern about indemnities and we'll be willing,
15 obviously, to work with them on that.

16 We have no objection to the transfer of agency if the
17 debtor is given authority to enter into customary successor
18 agency agreements to facilitate an orderly transition to BofA.
19 And we have no objection to the use of existing accounts. Our
20 biggest concern, Your Honor, you articulated and that is
21 permitted elevation of participation of assignments. We are
22 comforted in part that consensual commercial behavior is what's
23 being contemplated. That was not clear from the motion and
24 that no magic wand is being waved today to convert essentially
25 a one debt instrument into another one. The debtors have

1 agreed to add language to the order and statements to make
2 statements on the record that there would be no prejudice to
3 any existing rights of any parties to any of these debt
4 agreements including with respect to existing rights of setoff.
5 And that partially satisfies our concern. However, we've also,
6 in our objection, asked for information concerning the identity
7 of participants being elevated and related information
8 particularly, because BofA is currently the issuing bank for
9 LCs under the facility and there is unfunded revolver
10 availability.

11 So we reserve the right, Your Honor, assuming all
12 else is equal and the order looks like what has been agreed to
13 come back to the court if the debtor does not provide the
14 information we've requested in the objection. Thank you.

15 THE COURT: Okay. I should be clear that I have not
16 read the objection that you've just referred to. I'm assuming
17 that in making the comments you've just made, you told me what
18 I would have learned if I read your objection. I hope that's
19 true.

20 MS. SCHONHOLZ: Exactly, Your Honor.

21 THE COURT: Fine.

22 MS. SCHONHOLZ: Thank you.

23 THE COURT: Thank you.

24 MS. MAYERSON: Your Honor, Sandra Mayerson, Holland &
25 Knight for Caisse de Depot et Placement du Quebec. First of

1 all, I'd like to make it clear that we applaud what Lehman
2 Brothers Commercial Paper is trying to do here. Like Bank of
3 America, we had been trying to get them out of our relationship
4 and take control of the situation. However, we feel that this
5 rush to do it without proper notice and without all the terms
6 spelled out is really not in anyone's interest. And we have
7 several concerns that we think we could address with the debtor
8 but we think that there should be some adjournment of this
9 motion, an opportunity to work through some of the concerns we
10 have. Now, I should state at the outset that our particular
11 loan is set up in an unusual structure and may not even be
12 included here. But that's one of the problems is that there's
13 really no notice provided. After this order is entered, you
14 have no way of knowing if you've been elevated, if your agency
15 has been resigned. You have no opportunity to object to that.
16 So we would like to see some notice provision so that we know
17 if we're being affected or not affected.

18 Secondly, we are concerned whether the resignation,
19 once this order is entered, they can just resign or they have
20 to resign in accordance with the terms of the agreement. Our
21 agreement, for example, specifies that when they resign, that
22 resignation does not become effective until a replacement agent
23 is found and that's a very important provision to us because
24 the partnership cannot function without that provision.

25 Second of all, we don't think that elevation should

1 be unilateral on the debtor's part. We think that the parties
2 who are proposed to be elevated should be given notice and have
3 an opportunity to come into court. In our particular
4 situation, we have an unusual structure because it's a cross-
5 border transaction. And if we were elevated to be a direct
6 participant there would be huge tax consequences for us in
7 Quebec. So if we were elevated, it would really be a disaster
8 for us. And I think that we have several creative ideas how to
9 avoid that kind of disaster. We just have not been able to
10 find anybody at Lehman to talk to about it. We're as anxious
11 to get them out of the situation as they are anxious to get
12 out. But elevation wouldn't work in our case and may not work
13 in other people's cases as well.

14 Finally, we're concerned about implementation.
15 There's nothing in the order that says prior to their
16 resignation they have to implement things that they should have
17 implemented. For example, in our case, there were some notes
18 that were supposed to be issued by a third party trustee. They
19 said that they can't issue those notes until Lehman presents
20 them the old notes for cancellation which Lehman hasn't done.
21 If they just resign and disappear and those notes are never
22 presented, we would have a real problem. So I think that's
23 stuff that the language of the order could address if people
24 are given a few more days to work through some of these
25 situations. But I think having this order entered today

1 without any discussion among the affected the parties and
2 without notice to all the affected parties is a bit premature.
3 Thank you, Your Honor.

4 THE COURT: Okay.

5 MR. WILAMOWSKY: Good afternoon, Your Honor. Steven
6 Wilamowsky, Bingham McCutchen LLP on behalf of Met Life and
7 also here today on behalf of UBS Financial Services. Your
8 Honor, Met Life is a sub-participant and UBS has a number of
9 relationships including, I believe, a participant. I had a
10 very comforting discussion with Ms. Marcus just in the few
11 minutes before the hearing so I think that with respect to Met
12 Life's concerns about elevation, we really think that those are
13 being resolved. I rise in that respect only to reserve rights
14 because we haven't actually seen the order and the language
15 that's going to be going in and that Ms. Marcus is planning on
16 reading into the record. But we assume that, based on what
17 we've been told, we're not going to have a problem.

18 With respect to UBS, UBS was very concerned about --
19 is very concerned about money going up and getting in any way
20 trapped at Lehman. And therefore, we had asked for a finding
21 which presumably -- hopefully Your Honor will be able to make
22 based on the proffer that any money that goes up pursuant to
23 these agency relationships would not be -- or that comes down
24 from a borrower would not constitute property of the estate. I
25 think that Ms. Marcus also advised me that that would be taken

1 care of in the order as well. Again, because we haven't seen
2 the language that's being proposed, I'm just reserving our
3 rights.

4 THE COURT: Okay. Everybody has commented, it seems,
5 who's in the courtroom who cares to comment. I'm simply going
6 to ask if there's anyone on the telephone who wishes to
7 comment. And I'm going to make a comment before anybody says
8 anything about people who are participating by telephone.
9 Because this is a hearing that was conducted on the shortest
10 notice possible given the emergency nature of the relief being
11 sought, I'm going to be much flexible and lenient in respect of
12 telephonic appearances. But generally speaking, for those who
13 wish to appear by telephone for listening only purposes or for
14 participation purposes, unless you are outside the immediate
15 area of the court, namely Manhattan, and unless you have a good
16 reason to participate by phone, it is the Court's strong
17 preference that anybody who intends to have a speaking role in
18 this or any other hearing in the case be physically present in
19 court. For someone who is appearing from California or Florida
20 or a foreign country, obviously, telephonic appearance may be
21 the only practical solution. I'm somewhat concerned that
22 certain people who may be participating by phone today may have
23 taken advantage of the fact that this was happening as an
24 emergency hearing and may not actually qualify to be by
25 telephone as opposed to being present. But you're getting a

1 mulligan today. It's not going to be available any other day.

2 Now, having said that, is there anyone who wishes to
3 comment by phone? Apparently not.

4 MS. MARCUS: Your Honor, would you like me to address
5 the responses first?

6 THE COURT: Please.

7 MS. MARCUS: Okay. With respect to the Contrarian
8 Funds request that other types of participations be included, I
9 think we have confirmed that we are amenable to doing that and
10 will speak to anybody who wants to speak to us about this
11 issue. I'm not sure that that requires any changes in the
12 order itself or not. But that's something that we can
13 consider.

14 With respect to Ms. Mayerson's client, I think she
15 indicated that it's kind of a sui generis situation and that
16 the facts are different on this issue and what we would be
17 amenable to doing is excluding her client, Caisse de Depot -- I
18 don't know how to spell it -- from the ambit of this order if
19 that would make her more comfortable.

20 THE COURT: I'm not sure if that would make her more
21 comfortable. You'll have to speak with her about that.

22 MS. MARCUS: Okay. Alternatively, I can address
23 those objections with the fact clarifying, again, in the
24 language of the proposed order that I'll read will also
25 clarify, that we're not intending to affect anybody's rights,

1 that we're not intending to surprise anybody or provide anybody
2 with a participation or an elevation -- hey, you've been
3 elevated. We intend to discuss with each participant and each
4 borrower and each agent those transactions and deal with them
5 accordingly. Again, the purpose of the motion was for the
6 Court and everybody to know what we're doing, not to impose
7 anything on any of the counterparties.

8 THE COURT: In connection with your most recent
9 comments, let me ask you this because Ms. Mayerson's comment
10 included the suggestion that with an adjournment, some more
11 time for parties to react to what's going on here and to
12 evaluate the proposal and perhaps with notice provisions which
13 would include an opportunity to appear here that she might be
14 satisfied. Now, it's really that latter point that I'm raising
15 a question about. And I just need some comfort on this from
16 you. As I read your motion and proposed order, and I recognize
17 that the order is evolving, I did not view it as contemplating
18 judicial intervention in respect of future disagreements that
19 might arise as to an elevation of participation or as to the
20 terms of a particular transaction. My question to you is, is
21 it contemplated by the debtor that there will be a need for
22 follow-up oversight by the Court or an opportunity for parties
23 to transactions that are being negotiated to show up here to
24 the extent there are disagreements or issues that need to be
25 clarified?

1 MS. MARCUS: I think the debtor's position is that to
2 the extent that things can't be resolved consensually then we
3 would reserve the right to come back to court to say x
4 participant won't agree and we think something in the
5 Bankruptcy Code somewhere authorizes us to do this. Or,
6 similarly, with respect to the transfer of an agency. We're
7 not taking that position now but if we saw the need to at a
8 later date take the position that something in the Bankruptcy
9 Code in 365(f) gives us more rights than we might have by the
10 terms of the documents themselves then we would come back to
11 the court and seek that relief on notice with an opportunity to
12 be heard by the other party.

13 THE COURT: As it relates to a particular
14 transaction.

15 MS. MARCUS: Yeah. Or a group.

16 THE COURT: Okay. Thank you.

17 MS. MARCUS: Your Honor, I just wanted to note also
18 in connection with notice, I mentioned the LSTA website. I've
19 also been reminded that the LSTA sent an e-mail to all of its
20 members this morning again setting forth notice of the hearing
21 and a description of the motion.

22 I think that was all the objections that needed
23 responding to. And I think what we should do is save the
24 order -- the changes to the order till the end.

25 I mentioned, Your Honor, that James Seery of Barclays

1 Capital is present in the courtroom and is available to testify
2 if anybody thinks that's necessary. But what I would like to
3 do is proffer his testimony.

4 THE COURT: Is there any objection to an offer of the
5 witness' testimony by means of a proffer? There's no
6 objection. So why don't you proceed on that basis?

7 MS. MARCUS: Okay. Mr. Seery would testify that he's
8 currently employed by Barclays Capital and that until
9 approximately two weeks ago, he was employed by Lehman
10 Brothers. He was a managing director of Lehman Brothers Inc.
11 and the head of the global loan business. His responsibilities
12 included working on originating loans and managing LCPI and
13 Lehman's relationship as an agent bank on numerous loans.

14 He would describe Lehman's agency business as
15 follows: in its role as agent, Lehman collects interest and
16 principal payments from borrowers. It notifies lenders of
17 borrowing requests, collects amounts funded by the respective
18 lenders and makes advances of those amounts to borrowers. It
19 also reviews and executes waivers and amendments requested by
20 borrowers in connection with their loans and it services the
21 loans on a regular basis.

22 LCPI acts as agent for approximately 150 loans
23 involving more than a thousand lenders. He would also testify
24 that the account at Citibank, account number 30434141 is LCPI's
25 agency disbursement account, that it uses that account to take

1 payments in from lenders and to make payments to borrowers as
2 well as to receive payments of principal and interest from
3 borrowers for further repayment to the other members of the
4 lender group.

5 He would also testify that some small portion of the
6 funds in that agency account do constitute property of the LCPI
7 estate and that would represent LCPI's proportional share of
8 payments made with respect to loans in which it is not only the
9 administrative agent but also owns a piece of the loan itself.

10 Mr. Seery would testify that there would be
11 significant adverse consequences for both borrowers and lenders
12 if LCPI did not have immediate access to the agency account.
13 For borrowers, it is critical that they have access to their
14 working capital and if they didn't have that access, they might
15 have to default on their own obligations. For lenders, lenders
16 have counted on payments of interest and principal and,
17 likewise, if they did not get those payments, they might not be
18 able to meet their obligations.

19 LCPI's intent with respect to its 150 agency
20 positions going forward is to seek to transfer those positions
21 in cooperation with both borrowers and lenders in those
22 credits. He would also testify that Barclays itself might be
23 interested in taking an assignment or transfer of some of those
24 positions, again, if the other parties are on board with that
25 idea.

1 He would testify that in doing this, LCPI intends to
2 conform to the relevant credit agreement and does not intend to
3 improve its rights vis-a-vis the counterparties to those
4 agreements. He would also testify that subsequent to the LBHI
5 bankruptcy, LCPI gave some thought and tried to sell those
6 agency positions but that there really isn't anybody interested
7 in buying those positions because the fees associated with
8 those agency positions are not substantial enough in many cases
9 even to cover the cost of doing the work.

10 With respect to the participations, Mr. Seery would
11 testify that it's essential for LCPI to, again, get itself out
12 of the middle of those relationships because of the cost of
13 being in that position and the administrative burden of being
14 in that position as well as to minimize any potential claims
15 against LCPI arising from its failure to comply with its
16 obligations under those agreements.

17 I think that covers it, Your Honor.

18 THE COURT: The witness seems to agree that you've
19 done a nice job. Is there anyone who wishes to cross-examine
20 the witness in connection with the offer of proof that has just
21 been made? Is there any objection to my receipt of the
22 proffer? I hear no response. I accept the proffer as the
23 evidentiary record in support of the requested relief.

24 MS. MARCUS: Your Honor, I have a blackline copy of
25 the order. It's slightly different from the version that was

1 filed but doesn't include all the changes that people have
2 requested. But I suppose it would be easier for you to follow
3 along with this one, if I may approach.

4 THE COURT: You may approach. Thank you. Now,
5 before we go through the blackline, I have a question relating
6 to one comment made during the proffer and the statement that
7 was made during the presentation by counsel for Bank of
8 America. To what extent does the order authorize without
9 further Court approval a party such as Barclays or Bank of
10 America or any other institution, for that matter, to step in
11 as to any or all of these transactions to take over the agency
12 role? As I read this, the answer is not at all. But maybe I
13 need to read it more carefully. And it seems to me that if the
14 contemplation is that there is some major transaction that
15 either Bank of America or Barclays intends to enter into that
16 there should be a need to come back here. What's contemplated
17 and why?

18 MS. MARCUS: What was contemplated actually was that
19 we not come back to court. I think it's -- I have so many
20 marks on this. On the top of page 3, the second decretal
21 paragraph was intended to give the debtor the authority in its
22 business --

23 THE COURT: Just let me make sure I'm in the right
24 spot. Where are you?

25 MS. MARCUS: On page 3, the second decretal

1 paragraph, "Order that pursuant to Sections 105(a) and 363(b)
2 of the Bankruptcy Code, the debtor is authorized and empowered
3 to transfer, assign or resign from any and all in its business
4 judgment." That was intended to give the debtor the authority
5 without coming back to the court to do that.

6 Before you respond, based on what was in the proffer,
7 we don't believe -- there isn't anybody and we don't believe
8 that the agencies themselves have value. So there isn't
9 anybody, to our knowledge, that is going to come in and pay a
10 lot, or a little, frankly, for these agency positions. And
11 that's what I mentioned about the fact that the cost of
12 administering these agencies is actually more than the fee
13 that's received for those agencies.

14 THE COURT: It seems to me, though, and I may be
15 misunderstanding the nature of this business, that there may be
16 significant value in the relationships --

17 MS. MARCUS: That's exactly right.

18 THE COURT: -- and that being agent is not about
19 collecting agency fees on a particular transaction as much as
20 it is having access to a rolodex of a thousand lenders to sign
21 up to some or all on some other deal. At least that's my take.

22 MS. MARCUS: That's exactly right and that's what
23 I've been told by Lehman.

24 THE COURT: So there is value you may not be able to
25 ascribe in a classic fill in the blank sense to this but

1 there's clear commercial value to it. And at least as I read
2 this order when I -- and I hadn't read it with the blackline,
3 obviously, 'cause I'm seeing that for the first time. I did
4 not understand this to be -- not quite done. I know you want
5 to meet and confer over there. I did not understand this to be
6 a blanket authorization of what might be a wholesale transfer
7 of positions to one or more major institutions because that
8 hasn't been disclosed. And I'm not saying that I'm opposed to
9 it. I'm just questioning whether or not this very general
10 language provides that kind of authority. Now, we can talk
11 about whether or not it should or does. But I'm telling you
12 that, as I read it, my immediate reaction was that it didn't.

13 MS. MARCUS: It was intended to, Your Honor. And I
14 think that it's clear Barclays was originally looking at a
15 rather large -- Barclays -- at a rather large group of these.
16 I want to say twenty-four? Twenty-four of them. Okay. I
17 think we'll address this by putting Mr. Seery on the stand if
18 that's okay with you, Your Honor.

19 THE COURT: Okay.

20 MS. MARCUS: Since he has the facts, I can -- and be
21 helpful.

22 THE COURT: Do you want to take a break and talk to
23 your witness or do you want to just go cold?

24 MS. MARCUS: We'll wing it.

25 THE COURT: It's another exciting afternoon in the

1 Lehman case.

2 (Witness duly sworn)

3 THE COURT: Please be seated.

4 THE WITNESS: Thank you.

5 DIRECT EXAMINATION

6 BY MS. MARCUS:

7 Q. Please state your name for the record.

8 A. Jim Seery from Barclays Capital.

9 Q. And, Mr. Seery, you heard in the proffer that I presented
10 earlier may refer to the fact that you were previously employed
11 by Lehman Brothers. Could you describe your prior employment
12 by Lehman Brothers, please?

13 A. Yes. Quickly, I was at Lehman Brothers for approximately
14 nine and a half years. I ran the global loan business in my
15 last position. In that position, I was responsible for the
16 agency business which we're discussing today and that reported
17 up to me. That business I think you described well in the
18 proffer as to what generally the agency business does.

19 Essentially, it's an administrative function. So Your Honor
20 mentioned that you do have a rolodex. But virtually everybody
21 in the business has the same rolodex. So there's no new
22 lenders or discovery other than you do know in each credit who
23 the lenders are in those credits and that could potentially
24 help you trade those credits slightly better.

25 The real issue is that there's an administrative burden to

1 being the agent. And I think those were amply described by
2 counsel. And the cost of maintaining that service, only a few
3 institutions can do. We had looked, meaning LCPI had looked at
4 transferring all of the agency to Barclay for an administrative
5 convenience and then have Barclays resign those if the
6 relationship wasn't enough to merit supporting that agreement.
7 Barclays was unwilling to do that because of the cost and
8 burdens of taking on all those agencies. That's particularly
9 acute where the estate has not met certain liabilities with
10 respect to ongoing relationships for borrowing. That is, has
11 not fulfilled certain commitments with respect to revolving
12 credit facilities. Those obligations were not purchased by
13 Barclays. So to the extent that Barclays can have a
14 relationship with that borrower, it's going to be in respect of
15 Barclays' ability to service that borrower through banking and
16 providing capital, not through a preexisting LCPI relationship.
17 So there's really not a significant advantage other than for
18 lenders who are in that credit and want to be in it. So I
19 can't speak to necessarily BofA's motives for doing it for
20 Archstone other than to tell you there's only three or four
21 lenders in that credit. And if LCPI is out, they want to have
22 an agent they feel confident in and presumably they feel
23 confident in themselves. But there's not a significant value
24 to an entity coming and taking all of these agencies and we
25 wouldn't purport to do it on a wholesale basis. For Barclays,

1 they'll take some if it's appropriate ad the borrower feels
2 that's appropriate and Barclays is in the credits or has some
3 other relationship with that borrower. For others, we'll look
4 to different lenders like GECC or Citibank or whomever is in
5 that credit and try to make those transfers in the most
6 efficient way as possible. It's really about administrative
7 convenience; it's not about value.

8 THE COURT: I have a question, if you don't mind.
9 Have all of the people who used to work in this business at
10 Lehman for all practical purposes moved over to Barclays or has
11 there been significant loss in personnel?

12 THE WITNESS: There has not yet been significant loss
13 in personnel primarily because all of them have moved to
14 Barclays and are currently Barclays employees and are being
15 paid by Barclays. Barclays has a business that does agency
16 work. It wasn't nearly this size or is not nearly this size of
17 Lehman's existing business. We're working on a possible
18 transition of certain portions of those businesses. It's
19 unlikely that all of those personnel and all of that business
20 would follow to Barclays. So some portion certainly will
21 transfer and we're trying to do that in the most efficient way
22 possible both with respect to the LCPI businesses as well as
23 the Barclays businesses and for the best interest of as many
24 employees as we can. Certain of the employees in both
25 businesses may not continue in the capacities that they're in.

1 So, all of the employees have moved to Barclays.
2 LCPI never had employees that I'm aware of. They actually were
3 employed by Lehman Brothers Inc. The services are being
4 provided to LCPI under a transition services agreement that was
5 part of the sale and the accompanying documents and agreements
6 that related to the sale.

7 THE COURT: Okay. Thank you.

8 Q. Mr. Seery, I have one follow-up question. Has Alvarez and
9 Marsal, the CRO, been involved in LCPI's decisions regarding
10 what to do about the agency positions and what to do with the
11 participation?

12 A. Very much so. What -- the way LCPI and the existing
13 businesses have worked is that anything that would relate to a
14 transfer of assets out of LCPI be it in respect of a loan or
15 any other type of security or other arrangement has been worked
16 through Alvarez with counsel from -- for the debtor. So we
17 want to make sure that as CRO for the holding company, we
18 believe for the subsidiaries, Alvarez has been intimately
19 involved in any of those decisions in trying to do it only in
20 the ordinary course. If there's anything extraordinary, I
21 expect that we would be back here.

22 MS. MARCUS: I have no further questions.

23 THE COURT: Is there any one that wishes to examine
24 the witness? Apparently, the answer to that is yes.

25 MS. SCHONHOLZ: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MS. SCHONHOLZ:

3 Q. Good afternoon, Mr. Seery. Margot Schonholz for BofA. To
4 your knowledge, there have been no discussions with BofA
5 concerning taking over all the agencies, have there been?

6 A. Not to my knowledge.

7 Q. Okay. And you have no reason to believe that they would
8 be interested in taking over all the agencies, do you?

9 A. I have no such belief.

10 Q. Okay. You testified that BofA might be interested in
11 taking over the Archstone agency, is that correct?

12 A. Only because I heard you say it earlier.

13 Q. And there are only three lenders in that facility, is that
14 right?

15 A. I believe there's a fourth.

16 Q. But of the four, one of the four is LCPI, is that correct?

17 A. There's a -- there's a very small lender you may not be
18 aware of yet.

19 Q. Okay.

20 MS. SCHONHOLZ: I have no further questions, Your
21 Honor.

22 THE COURT: Anyone else? Then the witness is
23 excused.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Thank you.

1 MS. MARCUS: Now we can go through the order. On
2 page 2 of the order, Your Honor, after the second decretal
3 paragraph, a number of parties have asked and we have agreed to
4 insert the following language. "Ordered that the funds in the
5 agency account are not property of the debtors' estate except
6 to the extent of the debtors' proportional share of such funds
7 as lender." And then it goes on, "And it is further" --

8 THE COURT: Can you tell me, if you know, what we're
9 talking about in terms of dollars or percents of the funds that
10 are in the agency account? What's property of the estate?
11 What's not property of the estate?

12 MS. MARCUS: Do you know?

13 MR. SEERY: There's currently seventy-one million
14 dollars in the account. I do not have a breakdown. Between
15 the percentage that's Lehman's and the percent that would be
16 parties for whom we would be acting as agent. It would have to
17 be less than ten percent, I would think, Your Honor, but we can
18 come back to the court with some specifics.

19 THE COURT: It was just --

20 MS. MARCUS: A small --

21 THE COURT: -- a small amount. Okay.

22 MS. MARCUS: Okay.

23 THE COURT: I think the language covers it but
24 there's nothing in the record that relates to it. So --

25 MS. MARCUS: Right.

1 THE COURT: -- I'm happy to have that clarification.

2 MS. MARCUS: Turning over to page 3, for those
3 parties who don't have the blacklined version, in the second
4 decretal paragraph, I think in the version that was filed with
5 the court, it ended "in accordance" -- this is regarding the
6 administrative agent positions. It ended "as it determines in
7 accordance with its business judgment". And we added "subject
8 to and in accordance with the provisions of the applicable
9 credit agreements" and have been requested to insert "or
10 customary successor agency agreements to facilitate the orderly
11 transfer of LCPI's agency duties provided that no agreement
12 providing for the transfer of such positions shall impose on
13 the debtor affirmative obligations that could give rise to
14 administrative expense claims." And I think that addresses
15 some concerns of BofA as well as of the committee.

16 MS. FINK: Could you read that again slowly?

17 MS. MARCUS: Sure.

18 MR. PALMER: Do you have copies of that available?

19 MS. MARCUS: No.

20 MR. PALMER: Read it slowly, please.

21 MS. MARCUS: Sure. At the end of the paragraph --
22 let me read the whole paragraph. It's easier. "Ordered that
23 pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code,
24 the debtor is authorized and empowered to transfer, assign or
25 resign from any and all administrative agent positions as it

1 determines in accordance with its business judgment subject to
2 and in accordance with the provisions of the applicable credit
3 agreements or customary successor agency agreements to
4 facilitate the orderly transfer of LCPI's agency duties;
5 provided that no agreement providing for the transfer of such
6 positions shall impose on the debtor affirmative obligations
7 that could give rise to administrative expense claims."

8 MR. PALMER: Excuse me?

9 MS. MARCUS: Sorry, Your Honor.

10 THE COURT: Mr. Palmer?

11 MR. PALMER: Your Honor, Deryck Palmer of Cadwalader
12 on behalf of Citibank. What I was asking counsel for
13 clarification as to the extent there are any fees due to
14 Citibank as the bank that has this account, I want to make sure
15 this language that's being read into the record is not so broad
16 to prevent the payment of those fees 'cause those would be
17 administrative expenses that would be due and owing to
18 Citibank. So counsel was explaining to me that it was not
19 intended to affect that but I just wanted to make sure that's
20 on the record.

21 THE COURT: We now know publicly that it was not
22 intended to affect that. And I take it that that would satisfy
23 your concern, Mr. Palmer?

24 MR. PALMER: If it's not intended to affect that, it
25 does, Your Honor.

1 THE COURT: Fine.

2 MS. MARCUS: Okay. Another further clarification on
3 that language, Your Honor, where we inserted "or customary
4 successor agency agreements", I've been asked to clarify that
5 that doesn't override the provision that we comply with the
6 existing agreement. And that was really additive. To the
7 extent that a particular lender, meaning BofA in this case, I
8 guess, didn't have that language in their agreement, they might
9 want additional language but that it isn't intended to override
10 the proviso that we have to comply with the existing
11 agreements. Does that do it? Okay.

12 The next one, Your Honor, is in the third decretal
13 paragraph, again on page 3 --

14 THE COURT: The people listening in on the phone are
15 really missing out on the scene which is playing out before me
16 here with all the whispering going on.

17 MS. MARCUS: I apologize, Your Honor.

18 THE COURT: It's not your fault. It's nobody's
19 fault. It's just the nature of this particular hearing.

20 MS. MARCUS: The language where we talk about "will
21 not impose on the debtor affirmative obligations" will also say
22 "or indemnities that could give rise to administrative expense
23 claims".

24 Okay. The next one is the third decretal paragraph.
25 And this is the one that deals with elevating participations.

1 And we've agreed to insert -- and I'll just read the paragraph
2 as revised. I think it's easier. "Pursuant to Sections
3 105(a), 363(c) and 363(b) of the Bankruptcy Code, the debtor is
4 authorized and empowered in consultation with the committee to
5 elevate participations and sub-participations subject to and in
6 accordance with and to the extent permitted by the provisions
7 of the applicable credit agreements."

8 And there's one more. One more new paragraph. And
9 that will go right after the third decretal paragraph. This is
10 another one requested by the creditors' committee. "Ordered
11 that notwithstanding such elevation of participations or sub-
12 participations, neither the debtor nor the committee nor any
13 party in interest shall, by virtue of this order, waive the
14 right to subsequently argue that such participations or sub-
15 participations are not true participations."

16 And with that, I think that's all of the changes that
17 have been requested and everything we've agreed to.

18 Somebody asked me to clarify on the record that
19 consent rights and possible setoff rights will be dealt on a
20 consensual basis with the agents and the borrowers and that,
21 again, we're not intending to affect the relative rights. And
22 that's all I have, Your Honor.

23 MS. CATON: Your Honor, Amy Caton from Kramer Levin
24 on behalf of Contrarian and Abrams. Due to the nature of the
25 order and the fact that it generally refers to credit

1 agreements instead of all participations, I think we would like
2 to request either enlarging the definition of participations to
3 include all participations in claims or adding a decretal
4 paragraph at the end of the order providing that. In addition,
5 we'd like to make it clear that monies received in respect of
6 such participations are not property of the estate but to be
7 turned over to the beneficial holders. And the reason that we
8 need this language in there is that we're not sure that our
9 money that would be coming into the estate would actually come
10 through the agency account. And so, I think we would want to
11 clarify on that point. And I'm happy to work out language with
12 counsel.

13 THE COURT: Is the debtor willing to provide that
14 comfort?

15 MS. MARCUS: I think the debtor is, Your Honor. I'm
16 not sure if the committee has a position on that. So we'll
17 work on language, Your Honor. We would like to get an order
18 entered today if it's all possible. We do have a computer and
19 a disk and everything. We can make these changes.

20 THE COURT: That is possible. My suggestion is that
21 the issue with respect to the Enron claims might be the subject
22 of some quick drafting so that it can be included in in order
23 to be entered this afternoon. And I also think it would be
24 useful for any other party in interest who has been active in
25 this afternoon's hearing and who wishes to have sufficient time

1 to review, evaluate and get comfortable with the language that
2 has been read into the record that those parties stay in the
3 courtroom after we adjourn so that the order which is
4 ultimately entered is one that has the input of all interested
5 parties who have been active today.

6 Is there anyone who, on the basis of the record that
7 has been developed and the clarifications to the order, who
8 objects to the entry of that order as it has been reflected on
9 the record? I hear no objections. That doesn't mean that
10 parties may not have concerns, particularly because this is
11 happening so quickly.

12 I'm satisfied, based on the record, that the relief
13 that's being sought today, while unusual in my experience, is
14 nonetheless critically important to not only Lehman Commercial
15 Paper Incorporated as a newly filed affiliated debtor entity
16 but to the numerous participants, counterparties, borrowers and
17 others who are interested in the various facilities that are
18 ultimately being affected by this relief. Additionally, I
19 understand the need of Citibank in connection with account
20 30434141 to be assured that payments can be made in the
21 ordinary course without under risk, perhaps without any risk.
22 And so, this is an order which is necessary in order to
23 facilitate the reorganization of Lehman Commercial Paper but
24 also to facilitate the loan transactions that are at the heart
25 of the agency business that it has been described.

1 I'm prepared to approve the order in the form in
2 which it has been modified and appreciate the fact that the
3 record was supplemented by live testimony to answer certain
4 questions that I had.

5 Now that I've taken care of that matter, I have a
6 couple of unrelated comments which I would simply like to
7 address to counsel for the debtor. And these comments relate
8 to the growing family of Lehman related entities that are now
9 before me.

10 I'm holding up so you can see it a homemade chart
11 which I have made -- actually, it was made for me by one of my
12 clerks at my request. It's an attempt to understand the
13 corporate family that is presently before me including filed
14 and unfiled affiliated entities. And as a result of this
15 exercise, I've come to the conclusion that I really need some
16 more information from debtor's counsel at the status conference
17 to be held on the 16th to include if not a flow chart at least
18 a better understanding than I currently have as to why these
19 particular debtors who have been filed, the relationships that
20 they have to each other. I assume that orders will be sought
21 in each of the newly filed cases, comparable to the ones
22 entered as recently as last Thursday, to have general
23 administration orders applied to each of the companies.

24 But this is an example of an evolving Lehman story
25 which I'd like to know more about. It came as something of a

1 surprise to me that we had so many filings over the weekend.
2 And I can live with surprises but if I can have them softened
3 by some advance notice, that's even better.

4 MR. WAISMAN: Your Honor, Shai Waisman, Weil Gotshal
5 & Manges on behalf of Lehman Brothers. Your Honor's comments
6 are very well taken and completely understood. First, as to
7 the sudden nature of all of the filings from the first day on,
8 they very much have been reactionary by the debtors and by us
9 working unfortunately very much at the last minute with some of
10 these. The filings, in particular this weekend, and we can get
11 into further detail at the status conference on the 16th, but
12 the filings this weekend were necessitated really to protect
13 entities that had bank accounts which had cash in them where
14 there was sudden concern that certain parties may set off as a
15 result of certain actions at the end of last week. It was not
16 anticipated. I can assure Your Honor that sitting in my office
17 as late as Friday at 6 in the evening that this wasn't even on
18 anyone's radar. And we do regret having to repeatedly subject
19 Your Honor to walking in on a Monday morning or any weekday
20 morning to find additional entities and requests for immediate
21 relief.

22 Your Honor is correct. There will be an identical
23 all orders motion presented that we would hope to have heard on
24 the 16th such that all the administrative and some of the
25 substantive motions and orders that have been granted will

1 apply to these debtors as well.

2 As to the organizational structure and how these
3 entities fall into that organizational structure, how they
4 relate one to the other, we will endeavor to present something
5 to Your Honor. It is something that we have worked on from the
6 very moment we were engaged because that's obviously how you
7 prepare for a Chapter 11 case. This is, by last count, an
8 empire that included over 4,000 legal entities. And
9 understanding where they lie in the family tree and how they
10 relate one to the other is an endeavor that many people are
11 involved with and not one with which we've been able to present
12 with some certainty an organizational chart. Otherwise, we
13 would have had it for Your Honor. We hope to have one before
14 the 16th and to provide it to Your Honor and to chambers to
15 hopefully facilitate an understanding of the interrelationships
16 here. Thank you.

17 THE COURT: Okay. My last general question. This
18 may not be an accurate count but I think it's pretty close.
19 Based upon our review of the docket in the Lehman Brother's
20 Holdings case, there are 136 cure objections in connection with
21 the Barclays sale. I'd like to know what the debtors' view is
22 as to how more sufficiently to deal with those cure objections.
23 I don't have to know the answer now because I recognize that
24 I'm going off the pure agenda of today's hearing. But I am
25 concerned administratively that what we talked about on

1 September 19th as a deferral of cure objections to a later date
2 has turned into a significant case management problem at least
3 as I observe it from my end. It may be that it's not a problem
4 because of the language the debtors and the committee and
5 others are dealing with these issues. But I'm interested in
6 knowing, not necessarily now but sometime soon, how this will
7 be addressed so as to manage what could otherwise be an
8 unmanageable problem.

9 MR. WAISMAN: Shai Waisman again, Your Honor. As
10 Your Honor may recall in connection with the Barclays sale and
11 the assumption and assignment of purchase contracts, Barclays
12 took responsibility for all payment of all cure amounts and set
13 an October 3rd deadline for objections based on cure amounts.
14 And that's the reason for the volume of objections.
15 Instructions were actually posted on the claims agent website
16 on how parties with cure objections should proceed and
17 instructed them to contact Barclays' counsel and/or file
18 objections. My understanding is that Cleary Gottlieb, on
19 behalf of Barclays, is working with those counterparties trying
20 to reach consensual resolution. And to the extent they cannot
21 reach consensual resolution as to cure amounts, there would be
22 proper notice, including coordination with chambers, as to a
23 hearing with respect to any specific cure issue and any
24 evidentiary hearing. But until that point in time, my
25 understanding is, for your purposes, chambers can largely

1 ignore those cure objections because the intent --

2 THE COURT: That's exactly what I wanted to hear. I
3 was only slightly teasing. I'm assuming the bulk of these will
4 get resolved one way or the other and that it's conceivable
5 that some may require judicial intervention.

6 One thought that has occurred to me and you might
7 share this with counsel for Barclays is that some alternative
8 dispute resolution mechanism for the resolution of cure
9 disputes might be appropriate in order to minimize expense to
10 parties. And I'm mindful of the fact that having an
11 evidentiary hearing could turn out to be burdensome both to the
12 estate and to the parties who have a dispute as to the cure
13 amount. I don't want the fact that it is burdensome to be used
14 as a club to beat into submission parties who've raised
15 objections to the cure amount claim. I'm just using that as a
16 kind of vivid image. And so, one of the things I'd like
17 counsel to think about with counsel for Barclays is whether
18 there is a particular efficient alternative approach that could
19 be adopted before there's a need for judicial intervention, in
20 effect, to have a halfway house between consensually working it
21 out to working it out with ADR. And then the final circle
22 would be then we'd have a hearing after everything else had
23 failed.

24 MR. WAISMAN: Your Honor, I will take that back to
25 the Cleary firm and report to Your Honor at the status

1 conference if not before.

2 THE COURT: That's fine. My simple point is that I
3 want to minimize to the extent we can unnecessary
4 administrative expenses for all concerned.

5 MR. WAISMAN: Understood, Your Honor. Perhaps then
6 if that addresses all of Your Honor's questions --

7 THE COURT: That does.

8 MR. WAISMAN: -- perhaps if we could have half an
9 hour here --

10 THE COURT: Sure.

11 MR. WAISMAN: -- in Your Honor's courtroom, we would
12 then submit a consensual order to chambers either on disk or --
13 I think we're having slight technical difficulties with our
14 computer. Perhaps we would submit a hand-marked order with the
15 original order on a disk.

16 THE COURT: Whatever works best for counsel. We'll
17 be flexible.

18 MR. WAISMAN: Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. WAISMAN: Thank you again for seeing us on such
21 short notice.

22 THE COURT: Sure. We're adjourned. Thank you.

23 MS. MARCUS: Thank you, Your Honor.

24 (Whereupon these proceedings were concluded at 4:25 p.m.)
25

I N D E X

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

LISA BAR-LEIB

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Date: October 8, 2008